



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 22, 1996

Ms. Eugenia A. Cano  
City Attorney  
City of Alvin  
216 W. Sealy  
Alvin, Texas 77511

OR96-2186

Dear Ms. Cano:

You ask this office to reconsider our rulings in Open Records Letters 96-0682 and 96-0303 (1996). Your requests for reconsideration were assigned ID# 100191.

The City of Alvin ("Alvin") formed a public/private partnership with Sanifill of Texas, Inc. ("Sanifill") and submitted a joint proposal to provide solid waste disposal services to the City of Houston ("Houston"). Alvin received three requests for information regarding the proposal submitted to Houston, including the proposal itself, the "contract or letter of intent [between Alvin and] Sanifill, Inc.," and "any financial records which involve the reopening of the landfill for lawyers, engineering companies, consulting firms, labs, Sanifill and the City of Houston."<sup>1</sup> You contend that the requested information is excepted from required public disclosure by sections 552.101 and 552.104 of the Government Code.<sup>2</sup>

In Open Records Letters 96-0682 and 96-0303 (1996), this office concluded in part that Alvin could not withhold the information under section 552.104 of the Government Code because Alvin did not have constitutional or statutory authority to compete for the solid waste disposal contract to be awarded by Houston. In a letter dated June 4, 1996, we withdrew Open Records Letters 96-0682 and 96-0303 (1996) and determined that this office would reconsider the conclusions reached in those rulings.

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<sup>1</sup>With the exception of the highlighted portion of one invoice from a law firm, Alvin released the requested financial records to the requestor. The invoice at issue is in Alvin's possession and the highlighted portion references a term of its proposal to Houston.

<sup>2</sup>An attorney representing Sanifill submitted a brief to this office and also contends that the requested information is excepted from disclosure by sections 552.101 and 552.104. In support of these contentions, the attorney for Sanifill offers substantially the same arguments for withholding the requested information as those presented by Alvin.

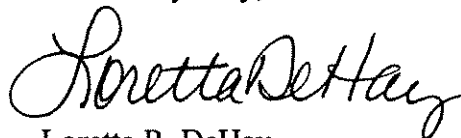
Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." In Open Records Decision No. 593 (1991), this office recognized that a governmental body can claim section 552.104 as a competitor when (1) the governmental body is authorized by constitutional or statutory law to compete with private enterprises and (2) the governmental body establishes that release of the requested information could substantially harm its legitimate marketplace interests. *Id.* at 4.

Alvin has statutory authority to enter into contracts to furnish solid waste management services. Health & Safety Code §§ 363.116, .117. In addition, chapter 252 of the Local Government Code instructs municipalities on the appropriate procedures to use when purchasing or contracting for goods or services. Section 252.021 of the Local Government Code generally requires municipalities that procure services requiring expenditures over a specified amount to engage in a competitive sealed bidding process. We understand that Houston solicited competitive bid proposals for its solid waste disposal requirements pursuant to chapter 252. Because Alvin is authorized by statute to contract to provide solid waste management services to other municipalities and appears to be properly engaged in a competitive proposal process with Houston, we believe that in this case Alvin has the statutory authority to compete for the contract for purposes of section 552.104 of the Government Code.

You also contend that release of the information relating to Alvin's proposal to Houston would substantially harm Alvin's marketplace interests. We have reviewed your arguments and agree that release of the requested information prior to Houston awarding the contract would harm Alvin's marketplace interests. Therefore, you may withhold the requested information under section 552.104 of the Government Code. We note, however, that you may not withhold the requested information under section 552.104 after Houston awards the contract to the successful proposer.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Because we conclude that Alvin is authorized to compete pursuant to section 252.021 of the Local Government Code and sections 363.116 and .117 of the Health and Safety Code for purposes of section 552.104, we do not address your arguments regarding the powers of a home rule city.

LRD/rho

Ref.: ID # 100191

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